IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-552

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.,
Petitioners,

v.

SIERRA CLUB, ET AL., *Respondents.*

No. 75-561

AMERICAN ELECTRIC POWER SYSTEM, ET AL.,
Petitioners,

v.

SIERRA CLUB, ET AL., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR PETITIONERS AMERICAN ELECTRIC POWER SYSTEM, ET AL.

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This Court granted the petitions for writ of certiorari and consolidated the cases in an order entered on January 12, 1976.

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 75-552, App. A, 1A-73A) is reported at 514 F.2d 856. The order of the Court of Appeals granting an injunction pending appeal (*id.*, App. B, 75A-80A) is reported at 509 F.2d 533. The order of the Court of Appeals remanding the case to the District Court for further findings (*id.*, App. C, 81A-83A) is not reported. The opinion of the District Court setting forth its Findings of Fact and Conclusions of Law (*id.*, App. D., 85A-101A) and the District Court's Supplemental Findings Pursuant to Remand (*id.*, App. E, 103A-116A) are not reported. Those opinions, etc., hereinafter are cited by reference to the appropriate Appendix to the petition in No. 75-552.

JURISDICTION

The judgment of the Court of Appeals (*id.*, App. F., 117A-118A) was entered on June 16, 1975. Mr. Justice Rehnquist, by order of September 3, 1975 in No. 75-552, and Mr. Justice White, by order of September 9, 1975 in No. 75-561, extended the time in which to file petitions for writ of certiorari to and including October 10, 1975. The petitions were granted and the cases consolidated by order of this Court entered on January 12, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 102(2)(C) of the National Environmental Policy Act of 1969 (hereinafter referred to as "NEPA"), 83 Stat. 853, 42 U.S.C. § 4332(2)(C), provides that:

> Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: . . . (2) all agencies of the Federal Government shall—
>
> * * *
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintainence and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes; * * *

QUESTION PRESENTED

Federal law authorizes the Department of the Interior to permit leases of federal lands to private parties for coal mining under approved mining plans. In order to evaluate the environmental effects of its leasing program and decide upon future actions, the Department prepared a nationwide, programmatic environmental impact statement. Before issuing individual leases, the Department prepares an environmental analysis or impact statement, as appropriate, considering the effects of the lease, both individually and in combination with other leases. When necessary or appropriate, the Department also prepares impact statements for areas of intermediate size, such as the 7800 square mile "Eastern Powder River Coal Basin" within Wyoming.

The question presented is whether Section 102(2)(C) of NEPA authorizes a court to intervene in this decision-making process to require the federal petitioners to prepare in addition a separate "regional" environmental impact statement covering all development of coal and related resources within a four-state area, denominated by respondents as the "Northern Great Plains region," so long as the federal petitioners continue "contemplating" private applications, even though there neither is, nor is there under preparation, a recommendation or report upon, or a proposal for, a regional plan, program or other region-wide federal action with respect to that region.

STATEMENT OF THE CASE

1. *The Complaint and the Parties.* The complaint in this case (A. 5-26) was filed on June 13, 1973, by seven organizations (the respondents here) allegedly concerned with the environment, on their own behalf and on behalf of their members, some of whom allegedly (A. 9) are "residents and land owners in the Northern Great Plains region" and "threatened" by damage to the environment in that area.[1] The Secretary of the Interior, the Secretary of Agriculture and the Secretary of the Army, together with the heads of four subordinate bureaus of the Interior Department, of one subordinate bureau of the Agriculture Department and of one subordinate bureau of the Army Department, were named as defendants, and they or their successors are the petitioners in No. 75-552. The petitioners in No. 75-561, upon whose behalf this brief has been filed, were permitted by the District Court to intervene as defendants. They include seven electric public utilities, who are dependant upon coal proposed

[1] The Court of Appeals recognized that, except for the Northern Plains Resource Council, none of the respondents "introduced any evidence to prove its standing," even though "standing to sue is an essential element of a cause of action and must be 'demonstrated' as well as 'alleged,'" but held that they could introduce such evidence on remand. (App. A, 20A-21A, n. 20). As to the NPRC, the Court of Appeals held that it had shown "minimal 'injury in fact'" which sufficed to give it "standing to bring the suit below, and to bring this appeal," even though that showing related only to "the proposed Westmoreland Resources coal mine on Crow-ceded land" and the environmental effects thereof upon "members . . . who reside in the vicinity of the proposed mine" (*ibid.*). An environmental impact statement had been issued in regard to that mine and had been sustained by the United States District Court for the District of Montana (see *id.*, 10A, n. 15). While the Ninth Circuit subsequently reversed that decision in part, in *Cady* v. *Morton*, 8 ERC 1097 (9th Cir., 1975), it did not hold that a "regional" impact statement was necessary, and it authorized mining operations pursuant to the approved mining plan pending completion of such a statement which would cover the some 31,000 acres leased by Westmoreland rather than only the 770 acres to which the approved mining plan related.

to be mined within that area as fuel for the generation of electricity to meet future demands of their customers; four coal mining companies who have made substantial investments in facilities to develop coal resources within the area; three natural gas companies who need such coal to operate projected coal gasification plants for the production of synthetic natural gas; and an individual rancher, who owns lands within the area.[2]

Respondents' complaint did not attack or otherwise seek to review any particular approval of a mining lease or plan or other federal action, or the adequacy or validity of any particular environmental impact statement prepared in connection with recommended action upon an application for such a federal action. Rather, respondents claimed that the federal petitioners have violated Section 102(2)(C) of NEPA by failing "to prepare and consider a comprehensive environmental-impact statement concerning coal development in the Northern Great Plains region before issuing any coal prospecting permits or mining leases, approving any coal exploration or mining plans, . . . or taking any other actions concerning coal development in the Northern Great Plains region" (A. 23-24), and sought to enjoin all such actions pending completion of such a comprehensive "regional" environ-

[2] See the affidavits filed in the District Court on behalf of the various intervenor-petitioners and set forth in Vol. II of the Appendix in the Court of Appeals (R. 254-425). That Appendix will hereinafter be cited by "R." and the appropriate page number or numbers. The Crow Tribe of Indians and the Wisconsin Power & Light Company also intervened as defendants.

mental impact statement (A. 25-26).[3] In short, as stated by respondents,[4] their "case involves whether a comprehensive environmental statement, rather than individual statements, must be prepared before federal actions concerning the coal development can proceed."

The "Northern Great Plains region" to which the complaint thus relates is loosely defined therein to include "northeastern Wyoming, eastern Montana, western North Dakota and western South Dakota" (A. 11), and apparently covers an area of approximately 90,000 square miles (R. 400).[5] As the District Court found (F. 7, App. D, 88A), the "'Northern Great Plains region' as described by the plaintiffs is not an entity, region, or area which has been defined by the Federal Government by statute or executive action for purposes of any Federal program, project or action."

[3] Respondents also claimed that the federal petitioners violated Sections 102(2)(A) and (D) of NEPA by failing to make "systematic interdisciplinary studies" of coal development in the region (A. 24-25). The rejection of that claim by the District Court (C. 5, App. D, 98A-99A) was not seriously challenged by respondents on appeal and was not disturbed by the Court of Appeals, and respondents did not petition this Court to review that holding. Hence, we do not further discuss that claim.

[4] Plaintiffs' Statement in Response to Defendants' Statement of Material Facts (filed November 21, 1973), at p. 2.

[5] The opinion of the Court of Appeals, on the other hand, generally relates to the "Northern Great Plains Province" which that Court described as covering "northeastern Wyoming, eastern Montana, western North Dakota, and western South Dakota, and extends southerly through strips of Nebraska and Colorado" (App. A, 2A). But the Court of Appeals also stated that "the relevant geographic area for development still seems somewhat uncertain (*id.*, 45A), and "that, absent abuse of . . . power, definition of the proper region for comprehensive development, and, therefore, the comprehensive impact statement should be left in the hands of the federal appellees" (*id.*, 45A-46A, n. 33).

And, as that Court further found (F. 8, *ibid.*), there "is no existing or proposed Federal regional program, plan, project, or other regional 'federal action' *within the meaning of NEPA Section 102(2)* for the development of coal or other resources in the area defined by the plaintiffs as the 'Northern Great Plains region.'" (Emphasis by the Court.) There are no allegations in the complaint to the contrary.

2. *Proceedings in the District Court.* After discovery limited to interrogatories addressed to the federal petitioners inquiring as to whether they expected to approve any mining leases, etc., prior to June 30, 1974 (R. 25-26) and answers listing applications that might be acted upon prior to that date (R. 33-50, 147-157), and without filing any supporting affidavits, respondents moved on September 4, 1973 for summary judgment (A. 99-100). Both the federal petitioners (A. 116-117) and these petitioners (A. 113-115) filed cross motions for summary judgment, and these petitioners also filed a motion for judgment on the pleadings (A. 101-104). Supporting affidavits were filed by the federal petitioners (A. 118-149) and by various of these petitioners (R. 254-425). On February 14, 1974, the District Court (Judge Barrington D. Parker) entered a Judgment denying respondents' motion and granting petitioners' motions (R. 250), and issued a Memorandum Opinion setting forth its Findings of Fact and Conclusions of Law (App. D, 85A-101A).

The affidavit of the Secretary of the Interior denied that there was any federal plan or program to control coal development in the Northern Great Plains region (A. 119) and respondents did "not dispute the fact that the federal defendants have no plan concerning coal development in the Northern Great Plains region

in the sense of a definite, rational program upon which to base their decisions;" respondents "not only admit[ted] that no plan exists," but also "strongly emphasize[d] this point" as in their view it "is the very absence of any such plan which demonstrates so convincingly that NEPA has been violated."[6] Hence, the District Court plainly was fully justified in making the finding, to which we have already referred (p. 7, *supra*), that there "is no existing or proposed Federal regional program, plan, project or other regional 'federal action' *within the meaning of NEPA Section 102(2)* for the development of coal or other resources in the area defined by the plaintiffs as the 'Northern Great Plains region.'" And, as the District Court further found (F. 31, App. D., 96A), there "is no evidence of record in this case that individual projects by private industry for the development of coal and other resources in the area defined by the plaintiffs as the 'Northern Great Plains region' are being planned and constructed as part of any integrated plan or program for any such area, or that any such individual projects are interrelated or integrated with other like projects in such area."

This does not mean, however, that the Government has ignored environmental considerations in the development of coal and related resources in the Northern Great Plains region (or elsewhere in the country). In 1973, the Interior Department commenced preparation of a national "coal programmatic" impact statement "on the proposed Federal coal leasing in the

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[6] Plaintiffs' Reply Memorandum in Support of Their Motion for Summary Judgment and in Opposition to Defendants' Cross Motion for Summary Judgment and to Intervenor-Defendants' Various Motions (filed November 21, 1973), at p. 13.

United States," to "provide a national overview of the impact of the entire Federal coal leasing program on the quality of the human environment" (F. 15, *id.*, 90A); to "serve as the foundation and framework for subsequent environmental analyses and supplemental statements which may be prepared for subregions, geological structures or basins, or on an individual basis for coal management actions" (F. 16, *id.*, 90A-91A); and to assist in the "development of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs most effectively" (*ibid.*).[7]

In the meantime, since February 1973 and until the issuance "of the coal programmatic EIS in its final form and the development of the planning system," Interior has implemented a "short-term coal leasing policy" under which coal leases have been issued only if "coal is needed now to maintain existing operations" or "is needed as a reserve for production in the near future"; the "land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation" and in addition "an environmental impact statement covering the proposed lease [will be] prepared when required under" NEPA (F. 18, *id.*, 91A).[8] In addition, Interior ceased issuing

[7] That national coal programmatic impact statement was issued in final form on September 19, 1975 as the *Final Environmental Impact Statement: Proposed Federal Coal Leasing Program.* A copy was lodged by the Government with the Clerk when it filed its petition.

[8] There is "no evidence in the record of this case" that the federal petitioners have either taken or threatened to take action on individual projects for coal development within the area without preparing impact statements in compliance with NEPA or without complying with applicable state environmental laws (F. 30, *id.*, 95A-96A).

"coal prospecting permits . . . until further notice" (F. 21, *id.*, 92A). This national, rather than regional, approach to a federal coal leasing policy accords with the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. §§ 181 *et seq.*, which applies to federal lands generally and does not distinguish those located in the Northern Great Plains region from those located elsewhere. And, Interior's trustee obligations to the Indian tribes counsels individual consideration of Indian lands (see pp. 13a-14a, *infra*).

The Interior Department has also initiated a number of studies which, while not congruent with respondents' Northern Great Plains region, either include or fall within the area of that "region." The North Central Power Study, initiated on May 26, 1970 "to investigate the potential for coordinated development of electric power supply in the north central United States" (F. 12, App. D, 89A)—covering all or large parts of 12 States and a minor part of three others (R. 340)—"was terminated at the end of Phase I" in 1972 when the "responses received did not indicate that a plan for coordinated development could be formulated" (F. 13, App. D, 89A-90A). The Wyoming-Montana Aqueducts Study "of potential water resource projects in southeastern Montana and northeastern Wyoming" (F. 14, *id.*, 90A) was suspended in 1972 and "held in abeyance pending the results of the NGPRP study" (F. 26, *id.*, 94A) discussed in the next paragraph.

The "NGPRP study" is the so-called Northern Great Plains Resources Program (F. 14, *id.*, 90A).

It was initiated by Interior on June 30, 1972 and conducted by an "interagency, Federal-State Task Force with public participation" (F. 23, *id.*, 93A), and relates to a five-State area, including Nebraska as well as Montana, Wyoming and the two Dakotas (A. 132). The purpose of that study "is to provide a tool for planning at all levels of government rather than to develop an actual plan" (F. 23, App. D, 93A), and the plan for the study made clear from the beginning that "the final report *will not recommend a preferred development plan* for the region," but instead "will provide information on the balancing of values and net benefits of alternative strategies so as to encourage and facilitate coordinated planning at all levels" (A. 136; emphasis in the original).[9] Thus, these three governmental studies "are not part of a plan or program to develop or encourage development" of coal resources within the Northern Great Plains (F. 14, App. D., 90A).

On the basis of these and other findings and its understanding of NEPA, the District Court concluded, among other things, that the NGPRP study "is a study project and not a program for development" (C. 9, *id.*, 100A); that "[m]ultiple applications for Federal action in connection with individual private projects which are unrelated to each other, except that they involve resource development at some point within a multistate area, do not constitute a private or Federal regional plan or program for development, nor do they require the Federal Government to develop

[9] That final interim report was issued on August 1, 1975. See Pet., No. 75-552, at p. 6. It did not in fact recommend a development plan for the region. See p. 20, *infra*.

a regional plan or program for development with respect to such multiple applications" (C. 4, *id.*, 98A); and that since "there is no existing or proposed regional program or project or other regional 'federal action' within the meaning of NEPA Section 102(2) for the development of coal or other resources in the 'Northern Great Plains region,' the complaint does not set forth a claim upon which relief can be granted" (C. 6, *id.*, 99A).[10]

Before argument or decision on respondents' appeal, the Court of Appeals, in an order entered *sua sponte* on October 14, 1974, remanded the case to the District Court to obtain the benefit, after a further evidentiary hearing, of findings in response to nine specific questions (App. C, 81A-83A). The District Court made supplemental findings in response to each of those inquiries (App. E, 103A-116A), but did not alter its prior findings (except as they were updated by the supplemental findings) or its conclusions of law.

[10] The District Court also concluded that federal approval of individual projects or applications need not await the completion of "regional" studies not oriented to the particular project or application (C. 5); that the complaint did not present a justiciable case or controversy (C. 8) as it did not seek to review any final federal action (C. 7); that even if a regional program were being developed, NEPA would not prevent action upon individual applications prior to the completion of that program (C. 10); and that respondents would not be entitled to an injunction, even if they had established a good cause of action, "because there has been no showing in this case that irreparable harm would result in the absence of such an injunction or that the balance of equities favors the granting of such an injunction; and because the record discloses that such an injunction would cause irreparable injury to the defendants and to the public at large" (C. 11). App. D., 98A-101A.

Among other things, the supplemental findings established that the short term coal leasing policy and the suspension of the issuance of prospecting permits continued in effect, and no such leases or permits had been issued on lands within the Northern Great Plains region (F. 1-3); that a draft interim report of the NGPRP study had been issued on September 27, 1974 (F. 5); that Interior's position continued to be that, while it "is possible a decision will be made to prepare a statement for the entire Northern Great Plains region," the "information available [from such sources as the national coal programmatic impact statement, the NGPRP study and "the nature and proximity of pending and proposed projects"] may indicate that statements on smaller subregions, geologic structures, basins or selected individual actions will fulfill the policy and procedural requirements of" NEPA "in a more satisfactory manner" (F. 6);[11] that Interior, Agriculture and the Interstate Commerce Commission had prepared an Eastern Powder River Coal Basin Impact Statement relating to four applications for approval of mining plans and related rights of way and an application for permission to construct a railroad line within that basin (F. 8); and that only two other environmental impact statements, one relating to a mining plan proposed by petitioner Westmoreland Resources and the other relating to a mining plan proposed by petitioner Peabody Coal Company, had been issued since February 17, 1973, in regard to

[11] In an affidavit filed with this Court in support of the Government's application for a stay pending review, Secretary Kleppe stated that this continues to be Interior's position (A. 194).

lands within the Northern Great Plains region (F. 9).[12]

While the District Court also found generally, in response to questions by the Court of Appeals, that the three impact statements "contain comprehensive descriptions of the cumulative impact of the governmental action on the surrounding area" (F. 9b) and "consider the ecological setting created by private activity in a general way with regard to demography and economic and social conditions within the areas covered by the statement" (F. 9c), the adequacy or validity of those impact statements is not at issue in this case and no findings or conclusions were made in that regard.[13]

3. *Proceedings in the Court of Appeals.* After argument but before decision of respondents' appeal, the Court of Appeals issued a *per curiam* order (pursuant to a motion by respondents) "that the Secretary of the Interior take no action concerning the mining plans and railroad rights-of-way set forth in the Eastern Powder River Coal Basin Environmental Impact Statement pending further order of this Court" (App.

[12] An impact statement regarding a mining plan proposed by the Amax Coal Company has since been prepared (A. 193; p. 18, *infra*). The Final Environmental Impact Statement for the Eastern Powder River Coal Basin in itself comprises six volumes and more than 3000 pages. According to the Statement, that Coal Basin includes almost five million acres (I-16), and contains some 12.4 billion tons of economically strippable, recoverable coal reserves out of a national total of about 45 billion tons (I-21 and 22).

[13] As we pointed out in n.1, p. 5, *supra*, the adequacy of the statement relating to the Westmoreland mining plan has been litigated in the Ninth Circuit. The adequacy or validity of the Eastern Powder River statement and of the Peabody statement have never been challenged in the courts (see A. 192-193).

B, 75A-76A). The only stated justification for that order was "that such an injunction is required to maintain the status quo pending disposition of this appeal" (*id.*, 75A), despite a reasoned dissenting opinion by Judge MacKinnon (*id.*, 76A-80A).

The opinion and judgment of the Court of Appeals reversing the District Court and remanding for further proceedings were issued on June 16, 1975, over a dissenting opinion by Judge MacKinnon (App. A, 52A-73A). The lengthy majority opinion by Judge Wright (*id.*, 1A-52A) is replete with *dicta,* much of which appears to us to be highly questionable if not clearly erroneous. We shall not attempt to summarize it in detail except for those aspects critical to the decision below.

The Court of Appeals purported to accept "the facts as found by the District Court" (*id.*, 39A) and did not disturb the finding (which was not attacked by respondents)[14] that there is no existing or proposed federal program, plan or other region-wide federal action in regard to the Northern Great Plains region. While the Court implicitly rejected petitioners' basic argument (and the holding of the District Court) that Section 102(2)(C) of NEPA does not require a regional impact statement in the absence of such a proposal for regional federal action, Judge Wright also did not adopt respondents' basic argument that the applica-

[14] Indeed, respondents reasserted the position they had taken in the trial court (see pp. 8-9, *supra*) in which they "agreed that the federal government had no regional plan concerning the actions it was taking, but contended that the very absence of any such planning demonstrates even more convincingly that" NEPA "has been violated." Brief of Appellants, at p. 47.

tions by private parties for Government leases, permits, etc., were so interrelated "geographically, environmentally, and programmatically" that Section 102(2)(C) should be construed as requiring a comprehensive, regional impact statement despite the absence of a proposal for regional federal action.

Rather, the Court of Appeals based its holding that the trial court's "conclusion of law was in error" (*id.*, 39A) upon a novel construction of NEPA that was not urged by any party: that a comprehensive regional impact statement may be required because a plan for regional development is "contemplated" by the federal petitioners, even though there has been no proposal, and thus no recommendation or report upon a proposal, for such a plan. The Court thought that "the facts in the record and as found by the District Court established that regional development of the Northern Great Plains is contemplated by the federal appellees" (*id.*, 33A), stating that the various studies outlined above and particularly the NGPRP study (see *id.*, 34A-38A) afforded "overwhelming" evidence that "the federal appellees have for years been endeavoring to develop a plan for regional development of the coal resources in the Northern Great Plains" (*id.*, 34A). The Court thus held "that comprehensive major federal action is contemplated in the Northern Great Plains" and that the "District Court's contrary conclusion of law was in error" (*id.*, 39A).

The Court of Appeals stated that its "conclusion that major federal action is contemplated in the Northern Great Plains region does not mean, *ipso facto,* that a comprehensive regional impact statement is required," but held that such a "statement must *precede* [our emphasis] the 'recommendation or report on *pro-*

posals [emphasis by the Court] for * * * major Federal actions.'" *Id.*, 42A. This view that an impact statement must precede an agency's recommendation or report on a proposal was grounded upon the court's earlier *Calvert Cliffs* opinion (*id.*, 42A-43A) which construed Section 102(2)(C) "to demand that environmental issues be considered at every important stage in the decision making process concerning a particular action," including proceedings at the staff level prior to a recommendation, report or proposal by the agency itself."[15] This view also gave rise to a "question of timing" because, while "the term 'proposals' does not encompass every suggestion, however unlikely to reach fruition, made by a federal officer," nevertheless "the 'ripeness' necessary before a statement is required is slight" (*id.*, 42A).

The Court of Appeals devised a complicated formula involving "four balancing factors," derived with "minor modifications" from its prior *SIPI* opinion,[16] "that must be analyzed and weighed to determine if the time is ripe for an impact statement" (*id.*, 43A). Its "analysis of the four balancing factors [was] somewhat inconclusive," however, and the Court found "it unnecessary to reach a conclusive resolution of the question at this time" inasmuch as the final interim

[15] *Calvert Cliffs' Coord. Com.* v. *United States A. E. Com'n.*, 146 U.S. App. D.C. 33, 449 F.2d 1109, 1118 (D.C. Cir., 1971).

[16] *Scientists' Inst. for Pub. Info., Inc.* v. *Atomic Energy Com'n.*, 156 U.S. App. D.C. 395, 481 F.2d 1079 (D.C. Cir., 1973). The timing issue in *SIPI* related to the point at which a programmatic impact statement was required in regard to a program that already existed in concrete form, rather than to the point at which such a statement was required prior even to the proposing of a federal program. See 481 F.2d, at 1082-1084, 1096.

report of the NGPRP study "is about to be issued" and the federal petitioners will then be in a position "to decide more definitely upon their role in the development of the Northern Great Plains" (*id.*, 47A).

Accordingly, the Court of Appeals remanded the case with directions that the federal petitioners "decide within 30 days of issuance of the NGPRP Interim Report, or the date of this opinion, whichever is later, whether to prepare a comprehensive, programmatic impact statement for the Region;" that the federal petitioners "report their decision, and the reasons for it, to the District Court;" and that, if they "decide against attempting to control development of the Northern Great Plains, they must also report, in detail, what the federal role in the Region will be" (*id.*, 49A-50A). Moreover, the Court directed that if the federal petitioners decide against preparing a regional impact statement, the respondents would be entitled "to present again to the District Court their theory that the geographic, environmental, and/or programmatic interrelationship of activity in the Region mandates such a statement" (*id.*, 50A).

In addition, the Court of Appeals continued in effect its injunction against federal action upon the applications subject to the Eastern Powder River Basin impact statement until "the decision whether to prepare a comprehensive impact statement . . . is reached" (*id.*, 50A). While the petitions for writ of certiorari were pending, respondents moved the Court of Appeals to enlarge its injunction to include a prohibition agains federal approval of a mining plan relating to the Belle Ayr South Mine of the Amax Coal Company, as to which a final environmental impact statement had been issued, and both the federal petitioners and these

petitioners moved the Court of Appeals to dissolve the existing injunction. In a November 7, 1975, order, the Court of Appeals denied the motions to dissolve and remanded respondents' motion to enlarge the injunction to the District Court. The federal petitioners then filed with this Court an Application for A Stay Pending Review on Petition for Writ of Certiorari, requesting a stay of the injunction entered by the Court of Appeals pending a decision by this Court on the merits. The January 12, 1976 order granting the petitions for writ of certiorari also granted that application for a stay of the injunction.

The application for a stay was accompanied by affidavits of Secretary of the Interior Kleppe and Federal Energy Administrator Zarb (A. 187-208). Among other things, Secretary Kleppe pointed out that the final interim report of the NGPRP study neither constitutes a "proposal for federal action nor does it propose a development plan for the area" (A. 191), and he made clear that the Interior Department now, as earlier, "does not have a plan or program to develop or contribute to the development of coal resources in the Northern Great Plains, the Rocky Mountain area, Appalachia, or in any other 'region' or 'province,' as such, in the country" (A. 195-196). He confirmed that approval of a particular mining plan or other proposed action "would not commit the Department to the approval of other mining plans or other coal related development proposals in the Northern Great Plains" (A. 198). And, he asserted that to "require the Department to decide on an impact statement, as the Court [of Appeals] does, where there is no plan or proposal for federal action, is to require that it ignore its authority, ignore its expertise and proceed

as an uninformed speculator filled with dreams and guesses" (A. 195).

Both Secretary Kleppe (A. 196-199) and Administrator Zarb (A. 206-208) emphasized and demonstrated in detail that further prolonged delay, such as would be involved if government actions upon applications for coal leases, mining plans, etc., are prevented pending preparation of a regional impact statement, would seriously undermine both government and private efforts to meet the nation's growing energy needs from domestic sources. Thus, Secretary Kleppe is "convinced that we have reached the point where further delay will seriously threaten the national interest" (A. 199), and Administrator Zarb affirmed that to "achieve necessary increases in coal production to meet national goals, prompt federal decisions on additional coal development are essential" (A. 208).

On January 26, 1976, Interior released a Statement on New Coal Leasing Policy by Secretary Kleppe, a copy of which is set forth as an Appendix to this brief. In that Statement, Secretary Kleppe announced, among other things, that he had "decided to adopt a new coal leasing policy based primarily on the proposal outlined in the Coal Programmatic Environmental Impact Statement, and to take other actions which combine to form a comprehensive National Coal Policy for the Federal lands" (App., 3a-4a). Among the "other actions" thus announced are a "competitive leasing system" under which "[n]o new prospecting permits will be issued" (*id.*, 9a); the implementation of new reclamation regulations which "will provide strict standards for all Federal coal mining activities, and . . . will be supplemented, where necessary, with site-specific stipulations for individual leases"

(*id.*, 10a); reiteration of the policy asserted in his affidavit to this Court (see p. 14, *supra*, and n.11 thereto) under which impact statements will be prepared for groups of proposed actions within a limited area or for individual proposals (*id.*, 10a-11a); continuation of the short-term leasing policy until "the new coal leasing system is completely implemented" (*id.*, 11a); and after such implementation the lifting of the "moratorium on new coal leasing" (*id.*, 14a).

SUMMARY OF ARGUMENT

A. Section 102(2)(C) of NEPA expressly provides that an environmental impact statement shall be included in a "recommendation or report on proposals for . . . major Federal actions" and that the statement shall set forth the environmental impact of the "proposed action." Under the plain language of the statute, therefore, a "regional" impact statement is not required unless and until the federal petitioners make a recommendation or report upon a proposal for regional federal action. No such recommendation, report or proposal has been made with respect to the Northern Great Plains.

B. The legislative history of Section 102(2)(C) confirms that the Congress intended that section to mean what it says. The analysis of that statutory provision in the relevant committee reports repeatedly refers to the fact that it is an agency proposal for major federal action, or recommendation or report thereupon, that gives rise to the requirement of an environmental impact statement, and that the statement is to concern the environmental impact of the proposed action. There is no suggestion in the legislative history that a "regional" impact statement is required in the absence

of an agency recommendation, report or proposal for regional federal action.

C. The recent *SCRAP II* decision by this Court squarely holds that Section 102(2)(C) does not require an impact statement if an agency has made "no proposal, recommendation, or report" upon the federal action in question. *Aberdeen & Rockfish R. Co.* v. *SCRAP*, 422 U.S. 289, 320-321 (1975). The *SCRAP II* decision also confirms that the kind of environmental impact statement required depends upon the nature of "the 'federal action' being taken" (*id.*, at 322), and supports the propriety of the decision of the Interior Department to consider environmental issues raised by proposed mining or other individual projects in separate impact statements directed to such a proposal or group of proposals.

D. The statutory language, its legislative history, and the *SCRAP II* decision are as fatal to respondents' "geographic, environmental, and programmatic relationship" theory as they are to the theory of the court below that a regional impact statement may be required because a regional plan or program is merely contemplated. The only geographic or environmental relationship of individual federal actions within the area defined by respondents as the "Northern Great Plains region" is that the private projects involved necessarily are located and have any environmental impacts within the area, and the alleged "programmatic" relationship is simply the studies initiated by Interior. The lower courts generally have held that impact statements limited to a particular proposed action are permissible under NEPA even though broader studies are underway or claimed to be necessary; and even though the particular proposed action is part of

some broader program if it has independent utility so that its approval does not commit the agency to approval of other aspects of the overall program. In any event, whatever may be the nature of the "relationships" relied upon by respondents, there is no recommendation, report upon or proposal by the federal petitioners for regional federal action. Accordingly, a regional impact statement clearly is not required.

ARGUMENT

It is true that the Interior Department did not preclude the possibility that at some future time the information then available might demonstrate the desirability of preparing a regional impact statement for an area which could be described as the Northern Great Plains region (although not necessarily the area so described by respondents), and in that sense could be said to "contemplate" the possibility of developing a regional plan or program for coal development within the area.[17] But it is also true that such "contemplation" never proceeded to the point even of proposing the adoption of such a regional plan or program. Rather, Interior undertook the preparation of a national "coal programmatic" impact statement looking forward to the development of a national coal leasing policy, and has prepared impact statements upon individual proposed projects or upon groups of proposed projects located within a coal basin or other relatively limited area.[18]

[17] The conclusion of the court below that "the federal appellees have for years been endeavoring to develop a plan for regional development of the coal resources in the Northern Great Plains" (see p. 17, *supra*) greatly overstates the situation, however. Interior made plain from the beginning of the NGPRP study that it was not intended to develop such a regional plan or program (see pp. 11-12, *supra*), so that the study upon which the court below primarily relied does not support its conclusion. And the North Central Power Study and the Montana-Wyoming Aqueducts study, upon which some reliance also was placed, were directed to electric power development or water resources (and thus only indirectly related to coal development), and in addition covered areas that varied widely from respondents' Northern Great Plains region and had been aborted long prior to completion. See p. 11, *supra*. Moreover, there is no evidence that the Agriculture and Army Departments (or their subordinate bureaus) have ever contemplated even the possibility of a regional plan or program for the Northern Great Plains. If the court below had not so overdrawn the true situation, it presumably would and certainly should have recognized that a regional plan or program had *not* "progressed beyond the 'dream' stage into some tangible form" (App. A, 42A), and thus that the "time for an impact statement is" *not* "ripe" (*ibid.*) even under its four-factor balancing test.

[18] This was the situation when Secretary Kleppe executed his recent affidavit (A. 192-195), as well as when former Secretary Morton executed his affidavit shortly after the commencement of this litigation (A. 120-121, 124) and at the time of the supplemental findings (A. 157-158, 163-164). See pp. 8-10, 14-15, 20, *supra*. The January 26, 1976 announcement by Interior not only denotes that a national coal leasing policy has now been adopted, but omits any mention of the possibility of preparing a regional impact statement for the entire Northern Great Plains area, while reaffirming the practice of preparing statements upon individual proposed projects or groups of several such projects within a limited "region" or area determined by basin boundaries, drainage areas, areas of economic interdependence, and other relevant factors. See pp. 21-22, *supra*, and pp. 10a-11a, *infra*. It now appears, therefore, that a regional impact statement for the entire Northern Great Plains is no longer even a recognized possibility for the foreseeable future.

We shall demonstrate that, in view of these circumstances, the plain language of Section 102(2)(C) of NEPA, its legislative history and the recent decision of this Court in *Aberdeen & Rockfish R. Co.* v. *SCRAP*, 422 U.S. 289 (1975) (hereinafter cited as *"SCRAP II"*), make absolutely clear that a regional environmental impact statement is not now required. As this

Court held in *SCRAP II,* under the provision in Section 102(2)(C) that an impact statement is to be included "in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment," the "time at which the agency must prepare the final 'statement' is the time at which it makes a recommendation or report on a *proposal* for federal action." 422 U.S., at 320 (emphasis by the Court). It is undisputed in this case that no proposal for a regional plan, program, project or region-wide federal action of any kind has been made (see pp. 7-9, *supra*), so there never has been a recommendation or report on such a proposal by the federal petitioners. Hence, the time for a regional environmental impact statement plainly has not arrived.

A. Under the plain language of NEPA § 102(2)(C), a regional impact statement is not required in the absence of a proposal for regional federal action.

Section 102(2)(C) plainly and unambiguously states that all agencies of the Federal Government shall "include in every recommendation or report on *proposals* for . . . major Federal actions . . . a detailed statement by the responsible official on," among other things, the "environmental impact of the *proposed action,*" any "adverse environmental effects which cannot be avoided should the *proposal* be implemented," "alternatives to the *proposed action,*" and any "irreversible and irretrievable commitments of resources which would be involved in the *proposed action* should it be implemented." (Emphasis added.)

It is difficult to perceive how the Congress could have stated more clearly that a final environmental impact statement is not required unless and until there is a recommendation or report by a federal agency upon a *proposal* for major federal action, and that the environmental effects, alternatives, etc. to be considered in such a statement are those that relate to the *proposed action.*[19] Consequently, since there has been no proposal for region-wide federal action relating

[19] As this Court stated in *SCRAP II,* in "order to decide what kind of environmental impact statement need be prepared, it is necessary first to describe accurately the 'federal action' being taken." 422 U.S., at 322. See pp. 33-35, *infra.* This does not necessarily mean, of course, that the cumulative environmental impacts of other projects in the vicinity of the proposed project need not be considered as they may constitute environmental factors relevant to the impact of the proposed project. Indeed, *Natural Resources Defense Council* v. *Callaway,* 524 F.2d 79, 89 (2d Cir., 1975), held (questionably, we think) that an impact statement on a proposed project to dump spoil at a particular spot in Long Island Sound should have included consideration of the cumulative effect of other projects to dump at the same location which were "well beyond the stage of mere speculation," even though none had "gained final approval. . . ." But the Second Circuit also recognized that "an EIS is required to furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the [proposed] project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible" (*id.,* at 88); held that it need not "consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them, is unknown or speculative" (*id.,* at 90); and further held that the cumulative environmental impacts need be considered only as they affected areas adjacent to the dumping place and need not extend to their effect "on the whole of Long Island Sound, a relationship as yet not understood" (*id.,* at 90). And see, *e.g., Nucleus of Chicago Homeowners Ass'n* v. *Lynn,* 524 F.2d 225, 230 (7th Cir., 1975), cert. pending, No. 75-951, which held that the cumulative effects of proposed public housing developments in other sections of Chicago need not be considered in determining whether the particular proposed project in a different part of that city constituted federal action significantly affecting the human environment. See, also, the cases summarized at pp. 38-42, *infra.*

to coal development in the so-called Northern Great Plains region, and thus no recommendation or report by a federal agency upon such a proposal, NEPA clearly does not require the federal petitioners to prepare a regional impact statement in that regard.

B. The plain meaning of § 102(2)(C) of NEPA is confirmed by its legislative history.

In view of the clarity of the language of Section 102(2)(C), we doubt if resort to the legislative history is appropriate. See, *e.g., Packard Co.* v. *Labor Board,* 330 U.S. 485, 492 (1947). But however that may be, the legislative history demonstrates that the Congress meant what it clearly said in the statute.

The bill reported to and initially passed by the House did not contain an equivalent to Section 102(2)(C). See H. Rept. No. 91-378, 91st Cong., 1st Sess. (1969). However, the generally equivalent Section 102(c) in the bill reported to and initially passed by the Senate was said by the Report of the Senate Committee on Interior and Insular Affairs to require any agency "which *proposes* any major actions" to determine "whether the *proposal* would have a significant effect upon the quality of the human environment"; and if "the *proposal* is considered to have such an effect, then the recommendation or report supporting the "*proposal*" must include findings that, among other things, "the environmental impact of the *proposed action* has been studied," adverse environmental effects "cannot be avoided by following reasonable alternatives which will achieve the intended purposes of the *proposal,*" and wherever "*proposals* involve significant commitments of resources" that are "irreversible and irretrievable," such "commitments are warranted." S.

Rept. No. 91-296, 91st Cong., 1st Sess. (1969), at 20-21 (emphasis added).

So, too, the Statement of the Managers on the Part of the House set forth in the Conference Report on the bill which was enacted, notes that Section 102 generally is "based on . . . the Senate bill" as there "was no comparable provision in the House amendment," and states that subsection (2)(C) requires every agency to "include in every recommendation or report on *proposals* for legislation or other major Federal actions, a detailed statement . . . on the environmental impact of the *proposed action,* any adverse environmental effects which can not be avoided should the *proposal* be adopted, alternatives to the *proposed action* . . . ." H. Rept. No. 91-765, 91st Cong., 1st Sess. (1969), at 8 (emphasis added). That report also states that the "conferees do not intend that the requirements for comment by other agencies should unreasonably delay the processing of Federal proposals" (*ibid.*).

These authoritative committee reports thus fully accord with the plain import of the language of Section 102(2)(C) that there must be a recommendation or report by a federal agency upon a proposal for major federal action before an impact statement is required, and that the environmental impacts to be considered are those that relate to the proposed action. The court below did not cite any legislative history to the contrary, respondents have not done so during the proceedings below, and we do not know of any contrary legislative history.[20] Hence, that history also fully sup-

[20] The bill reported to the Senate initially was passed unanimously without debate. 115 Cong. Rec. 19008-19013 (1969). Concern about possible conflicts with a bill reported by another committee resulted in the adoption of certain amendments, however,

ports our position that a regional impact statement is not required, regardless of whether a regional program or plan is "contemplated," since no regional program, plan or region-wide federal action has been proposed and no recommendation or report has been made in regard to such a proposal.

C. This Court's SCRAP II decision holds that an environmental impact statement is not required prior to an agency's recommendation or report on a proposal for major federal action.

This Court's *SCRAP II* decision, which was issued after the decision of the court below in this case, establishes beyond any doubt that the Court of Appeals

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before the bill was sent to conference. See *id.*, 29046-29065. Those amendments are not important for present purposes (although we note that one changed the bill's requirement that the agencies make "findings" on the environmental impacts of proposed actions to the requirement carried over into Section 102(2)(C) of NEPA of merely a statement in that regard, see *id.*, 29052-29053). But the occasion of those changes gave rise to several statements referring to the fact that impact statements are to be included in recommendations or reports on proposals for major federal actions and are to relate to the environmental impacts of the proposals thus acted upon (*id.*, 29052-29053, 29055, 29058). The House bill (which did not contain an equivalent of Section 102(2)(C)) was received in the Senate on the same day and gave rise to further such references (*id.*, 29068, 29083), including an analysis of the relevant provision in the Senate bill similar to the one made in the Senate Report (*id.*, 29085). The explanation of the Conference Report (which the Senate adopted unanimously) occasioned an additional such reference (*id.*, 40416) and a similar analysis (*id.*, 40420). The House also agreed to the conference report without recorded objection, and after a short debate which included a repetition of the analysis of Section 102(2)(C) contained in the Conference Report (*id.*, 40923-40924). There was no controversy about this aspect of Section 102(2)(C) during the debates in either body, and no suggestion by anyone that the Congress intended to require an impact statement in the absence of an agency recommendation or report upon a proposal for major federal action.

erred in not affirming the dismissal of respondents' complaint.

In that case, a three-judge district court had held (in an opinion by Judge Wright) that the Interstate Commerce Commission had violated NEPA in approving a proposal by the railroads for a general rate increase applicable to recyclables as well as to other commodities, because among other things, an "oral hearing which the ICC chose to hold prior to its October 4, 1972, order [approving the proposal with minor exceptions] was an 'existing agency review process' during which a final draft environmental impact statement . . . should have been available . . . ." 422 U.S., at 319-320. This Court held "that the District Court erred in [so] deciding . . . ." *Ibid.*

This Court's reasons for that holding were stated as follows (422 U.S., at 320-321):

> "NEPA [§ 102(2)(C)] provides that 'such statement . . . shall accompany *the proposal* through the existing agency review processes' (emphasis added [by the Court]). This sentence does not, contrary to the District Court's opinion, affect the time when the 'statement' must be prepared. It simply says what must be done with the 'statement' once it is prepared—it must accompany the 'proposal.' The 'statement' referred to is the one required to be included 'in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment' and is apparently the final impact statement, for no other kind of statement is mentioned in the statute. Under *this* sentence of the statute, the time at which the agency must prepare the final 'statement' is the time at which it makes a recommendation or report on a *proposal* for federal action. Where an agency initiates federal action by publishing

a proposal and then holding hearings on the proposal, the statute would appear to require an impact statement to be included in the proposal and to be considered at the hearing. Here, however, until the October 4, 1972, report, the ICC had made no proposal, recommendation, or report. The only proposal was the proposed new rates filed by the railroads. Thus, the earliest time at which the *statute* required a statement was the time of the ICC's report of October 4, 1972—sometime after the oral hearing." (Emphasis by the Court; footnotes omitted.)

Consequently, in accordance with the plain language of the statute, this Court squarely held that NEPA does not require an impact statement by a federal agency until "the time at which it makes a recommendation or report on a *proposal* for federal action," except perhaps when the agency itself "initiates federal action by publishing a proposal and then holding hearings on the proposal . . . ." There is no such requirement prior to the agency's recommendation or report upon a proposal made by a private party—such as the railroads' proposal for a rate increase—since the agency itself has made "no proposal, recommendation or report." That holding applies *a fortiorari* to this case where there never has been either an agency or, indeed, a private proposal for regional federal action regarding coal development in the so-called Northern Great Plains region, and, of course, no agency recommendation or report upon such a proposal.[21]

[21] In a footnote to the passage from *SCRAP II* which we have quoted in the text, this Court specifically disapproved, since "they would appear to conflict with the statute," the *Calvert Cliffs* decision by the District of Columbia Circuit and two decisions by the Second Circuit "which read the requirement that the statement accompany the proposal through the existing agency review processes differently . . . ." 422 U.S., at 321 n.20. The *Calvert Cliffs* decision, in another opinion by Judge Wright, had broadly construed NEPA as requiring that "environmental issues be considered at every important stage in the decision making process concerning a particular action" and thus held that the environmental impact statement must be given consideration during proceedings at the staff level upon a private application before any recommendation, report or proposal by the agency itself (the Atomic Energy Commission) for federal action upon such application. *Calvert Cliffs' Coord. Com.* v. *United States A. E. Com'n, supra*, 449 F.2d at 1118. That interpretation of NEPA, which this Court repudiated in *SCRAP II*, provided the principal underpining for both the decision of the three-judge district court which this Court reversed in *SCRAP II* (see 371 F. Supp., at 1299-1300) and the decision below which we seek to have reversed in this case (see pp. 17-18, *supra*).

Another aspect of the *SCRAP II* decision is relevant here, since it further confirms the propriety under NEPA of the practice of the federal petitioners of analyzing the environmental impacts of individual projects involved in a particular application or group of applications in statements that relate to such proposed project or projects rather than in a comprehensive overall regional statement for the entire Northern Great Plains "region."

This Court held that the three-judge district court also was "plainly incorrect" in its further holding that the impact statement eventually prepared by the ICC in regard to the general rate increase was deficient "because it inadequately explored the underlying rate structure and inadequately explored the *extent* to which the use of recyclables will be affected by the rate structure." 422 U.S., at 326 (emphasis by the Court). In so holding, this Court pointed out that "in order to decide what kind of an environmental impact statement need be prepared, it is necessary first to

describe accurately the 'federal action' being taken." 422 U.S., at 322. This accords, of course, with the language and legislative history of NEPA which show that the environmental impacts to be considered are those which relate to the proposed action. See pp. 26-30, *supra*. Thus, the ICC appropriately could limit the scope of its impact statement regarding the general rate increase to the "few environmental issues" directly relevant to such general action, and consider those environmental issues raised by the rates charged for transportation of a particular commodity or category of commodities—such as recyclables—in future proceedings directed to the validity of those specific rates. 422 U.S., at 322-326.

Hence, the contrary decision of the three-judge district court constituted "an entirely unwarranted intrusion into an apparently sensible decision by the ICC to take much more 'limited' action in [the general rate] proceeding and to undertake the larger action," insofar as environmental issues raised by rates on recyclables are concerned, "in a *separate* proceeding better suited to the task." 422 U.S., at 326 (emphasis by the Court). So, too, the decision by the court below in this case constitutes an entirely unwarranted intrusion into the decisions of the federal petitioners as to the most appropriate proceeding in which to consider the environmental issues raised by a particular mining plan or other proposed coal-related project. It is just as "sensible" for the Interior Department to consider the environmental impacts of such individual proposals or groups of proposals in proceedings directed specifically to the issue of whether such proposal or proposals shall be approved, rather than in some general "regional" proceeding or impact statement, as

it is for the ICC to consider the environmental impacts of rates on recyclables in a proceeding directed specifically to the validity of such rates. There is no warrant for intrusion by the courts in either situation."[22]

D. There is no basis for respondents' contention that a regional impact statement is required by NEPA § 102(2)(C) because all federal actions relating to coal development within the Northern Great Plains are "geographically, environmentally, and programmatically" related.

The District Court found, among other things, that there "is no evidence of record in this case that individual projects by private industry for the development of coal and other resources in the area defined by plaintiffs as the 'Northern Great Plains region' are being planned and constructed as part of any integrated plan or program for any such area, or that any such individual projects are interrelated or integrated with other like projects in such area." See p. 9, *supra*. Hence, insofar as appears, each such project or proposed or potential project can stand alone and has independent utility.

Respondents did not contend (or introduce evidence) to the contrary in the lower courts. Respondents did contend that all past and future such individual projects within the area necessarily are "geograph-

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[22] Indeed, Interior also has prepared a national coal programmatic impact statement in connection with the national coal leasing policy that has now been announced, much as the ICC did with respect to the general rate increase involved in *SCRAP II*. The adequacy of that impact statement and any other issues that might be raised by that statement or by the new national coal leasing policy, of course, are not issues that have been raised in this case. So, too, there is no issue in this case concerning the adequacy or validity of any impact statement—or agency approval—regarding a particular proposed project or group of proposed projects.

ically" related in the sense that they are or will be located at some point within the area; and "environmentally" related in the sense that environmental impacts of projects located within the area necessarily are felt within the area; and "programmatically" related in the sense that Interior's NGPRP study, North Central Power study and Montana-Wyoming Aqueducts study are concerned to some extent with that area.

Of course, whatever area may be defined as a "region," the very fact of that definition will assure that all federal actions within the region as so defined are "geographically" and "environmentally" related in the sense with which those terms have been used by respondents. Respondents' contention, therefore, basically is an argument that the studies initiated by Interior suffice in themselves to require all the federal petitioners to prepare a comprehensive, regional impact statement.

Even apart from the fact that each of those studies differs in scope from each other and covers an area which is either larger or smaller than the "Northern Great Plains region" as defined by respondents (see pp. 11-12, *supra*), respondents' argument is plainly erroneous. However that argument may be stated, it still remains true that none of the federal petitioners has reported upon, recommended or proposed any region-wide federal action. Hence, as we have demonstrated, the statutory language, its legislative history and this Court's *SCRAP II* decision conclusively establish that a comprehensive, regional impact statement is not required. Those authorities are just as fatal to respondents' "geographic, environmental and programmatic relationship" theory as they are to the

"contemplation" theory of the court below. Indeed, that court's theory is merely a more sophisticated extension of respondents' theory, as the court's view that a regional plan or program is "contemplated" by the federal petitioners is grounded upon the same studies that respondents rely upon to show an alleged "programmatic" relationship. See p. 17, *supra*.

Respondents' argument and the decision below also are inconsistent with decisions by several of the courts of appeals. In those decisions, which we shall briefly summarize, the courts have upheld impact statements limited to a particular proposed action even though a broader "regional" study was underway or argued to be necessary; or even though the proposed action was a part of some larger project, program or plan, where the proposed project had independent utility so that its approval did not commit the Government to other aspects of the overall project, program or plan.[23]

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[23] The only contrary decision of which we are aware is *Conservation Soc. of S. Ver., Inc.* v. *Secretary of Tran.*, 508 F.2d 927 (2d Cir., 1974), which was relied upon by the Court of Appeals in this case (see App. A, 28A-29A). It held that an impact statement for a federally-aided highway project was inadequate, even though the road to be constructed "is admittedly a project with local utility" and "no plan presently exists for constructing" a more extensive "superhighway," because "an ultimate . . . superhighway is the expectation of state agencies with the knowledge and cooperation of the federal government." *Id.*, at 934-935. In so holding, the Second Circuit—like the court below in this case—relied upon the view that an impact statement must be prepared prior to the agency's recommendation, report or proposal. Hence, that decision also appears to be contrary to this Court's *SCRAP II* decision as well as to the language and legislative history of NEPA. And, this Court granted a petition for writ of certiorari (No. 74-1413), vacated the judgment of the Second Circuit and remanded "for further consideration in light of" *SCRAP II*. 44 U.S.L.W. 3199 (October 6, 1975).

Jicarilla Apache Tribe of Indians v. *Morton,* 471 F.2d 1275 (9th Cir., 1973), upheld Interior in preparing separate impact statements upon three proposals for the construction of electric-generating plants in the Southwest, despite contentions that the statements were inadequate because Interior had not awaited completion of a Southwest Energy Study so as to take into consideration the regional environmental factors disclosed by that study.[24] The Ninth Circuit pointed out, among other things, that "it is doubtful that any project could ever be initiated" if an "impact statement can never be prepared until all relevant environmental effects were known," as at "any point in time, there are likely to be any number of studies underway concerning a host of environmental or other societal problems." The Court held that it would not "substitute its judgment for that of the Secretary, who is charged by NEPA with preparing a thorough statement of the environment consequences of a proposed project, as to what particular information will be required to complete that statement." *Id.,* at 1280-1281.

Environmental Defense Fund, Inc. v. *Armstrong,* 356 F. Supp. 131 (N.D. Cal., 1973), aff'd, 487 F.2d 814 (9th Cir., 1973), cert. den., 416 U.S. 974 (1974), declined to enjoin the New Melones Dam project in the Central Valley of California for which an impact statement had been prepared, despite insistence that

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[24] The Southwest Energy Study "was designed to evaluate the problems created by further development of coal-fired electric power in the Southwest" (*id.,* at 1279). And thus was a "regional" study for that area similar to the NGPRP study in regard to the Northern Great Plains area.

the statement was inadequate because "a comprehensive study of the [entire] Central Valley Project [should] be made viewing the system of state and federal water projects as an integrated unit." *Id.,* at 139. The court stated that while it "agrees with the wisdom of so doing, NEPA itself does not so require," since:

> "So long as each major federal action is undertaken individually and not as an indivisible, integral part of an integrated state-wide system, then the requirements of NEPA are determined on an individual major federal action basis. Plaintiffs' suggestion that there is need for a comprehensive study of the Central Valley Project should be addressed to the Congress, and not to be Court." *Id.,* at 139.

Indian Lookout Alliance v. *Volpe,* 484 F.2d 11 (8th Cir., 1973), held that an impact statement upon a 14-mile segment of a federally aided highway project was inadequate because that segment "does not have an independent utility of its own, which would require that it end in . . . present major highways or cities." *Id.,* at 19. The Court also asserted that the statement need not cover the entire planned project as such "plans usually are and should be visionary, subject to extensive modification and dependent to a large degree upon the availability of both state and federal funds," and a "state . . . should not be placed in a vise in which it can do nothing to take care of present traffic needs . . . until an extensive time-consuming study has been made of the entire plan." *Ibid.* See, also, *Swaim* v. *Brinegar,* 517 F.2d 766, 776 n.12 (7th Cir., 1975), and *Daly* v. *Volpe,* 514 F.2d 1106, 1110 (9th Cir. 1975), which approved the "independent utility" test ad-

vanced in the *Indian Lookout* case for application to impact statements relating to other highway projects.[25]

Sierra Club v. *Callaway,* 499 F.2d 982 (5th Cir., 1974), upheld an impact statement limited to the Wallisville Project for the construction of a reservoir and navigation channel that, although "made compatible in certain of its features" with a much larger Trinity River Project, was not "a mere component, increment, or first segment of Trinity," but rather was "a separate viable entity" which "should be examined on its own merits" so that the "Wallisville EIS should speak for itself." *Id.,* at 990.

Sierra Club v. *Stamm,* 507 F.2d 788 (10th Cir., 1974), rejected a contention that an impact statement for the Strawberry Aqueduct and Collection System was "too narrow in scope, and should be a final statement at least

[25] In *Citizens Against the Destruction of Napa* v. *Lynn,* 391 F. Supp. 1188 (N.D. Cal., 1975), the court upheld an environmental statement on a plan to redevelop the central business district of Napa, rejecting a contention that the plan should have covered the entire redevelopment program or plan for that city, as the particular 12-block project (out of an overall total of 33 blocks) would not necessitate completion of the remainder of the overall project and had an independent justification. *Id.,* at 1192-1195. In so holding the court analyzed the "highway" cases upon some of which the plaintiffs primarily relied (as did respondents in the courts below). While "[l]anguage from several of the legion of highway cases may be taken out of context to compel the preparation of broad, all-inclusive impact statements for all government interference with the environment . . . , the soundest approach to the highway cases in a non-highway context is to extract the common sense tests the courts in those cases employed." *Id.,* at 1193. Those tests are whether construction of the particular segment "would coerce the construction of an additional segment" rather than having an "independent justification" in that it "has such a substantial local purpose that it can stand alone . . . ." *Id.,* at 1193-1194.

for the entire Bonneville Unit, if not indeed for the entire Central Utah Project" (*id.,* at 790) which had been authorized by the Congress as "a plan to collect, develop and divert water in the Bonneville and Uinta Basins of central Utah for municipal, industrial, agricultural and recreational purposes" (*id.,* at 789). Since the finding by the trial court—that the Strawberry System "has an independent utility of its own" and can "operate and function separately from the remaining unconstructed systems of the Bonneville Unit or other units of the Central Utah Project"—had "adequate support in the record" (*id.,* 791), the Tenth Circuit "agree[d] with the trial court that the Strawberry system in and of itself constitutes a 'major Federal action' and that it is not a mere increment of either the Bonneville Unit or the Central Utah Project requiring a final impact statement for something more than the Strawberry system" (*id.,* at 792-793).

Trout Unlimited v. *Morton,* 509 F.2d 1276 (9th Cir., 1974), rejected a contention that an impact statement upon the First Phase of the two-phase Teton Dam and Reservoir Project authorized by the Congress was "fatally inadequate because it does not discuss the environmental impact of the Second Phase" of that overall Project. *Id.,* at 1285. The "First Phase is substantially independent of the Second" in that it would not "be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken," and thus is unlike the situation in those "cases which hold that a series of interrelated steps constituting an integrated plan must be covered in a single impact statement." *Ibid.* See, also, *Friends of the Earth* v. *Coleman,* 513 F.2d 295 (9th Cir., 1975), in which the Ninth Circuit upheld an impact statement in

regard to a highway project, even though the statement did not consider the environmental impacts of a canal project from which dirt used as fill for the highway was to be excavated. The "proper test . . . does not depend upon the interrelation of the projects per se," but "upon whether completion of one project will inevitably involve an "irreversible and irretrievable commitment of resources' to the second." *Id.,* at 299.

Finally, *Nucleus of Chicago Homeowners Ass'n* v. *Lynn,* 524 F.2d 225 (7th Cir., 1975), cert. pending, No. 75-951, upheld a determination by the Department of Housing and Urban Development that an impact statement was not required for an 84-unit urban renewal project, rejecting a contention "that HUD violated its duty under NEPA to consider the comprehensive environmental impact of the 1500 unit scattered-site housing program [in Chicago of which the 84-unit project was one part] when it confined its environmental analysis to the 84 units the agency has thus far approved." *Id.,* at 230. "While a given action 'may be more appropriately evaluated in a single environmental clearance,' HUD is not compelled to aggregate several projects if, in its judgment, evaluation of the aggregate is not feasible;" and even though "there are environmental considerations common to all sites that are best considered in the aggregate, the fact that by design the sites are scattered through the neighborhoods of the city counsel for separate consideration of discrete sites." *Ibid.* See, also, *Trinity Episcopal School Corporation* v. *Romney,* 523 F.2d 88, 95 (2d Cir., 1975), another housing development case, in which the Second Circuit "agree[d] with the trial court that an environmental impact statement is not required for the Area as a whole" as each "section will have its own individual problems."

The majority of the court below sought to distinguish the cases summarized above (except for those not yet decided) on the ground that they "involved the propriety of an injunction against an individual project pending completion of a regional EIS or other study" and that "[n]one of the cases involved a direct challenge to the need for a regional EIS." App. A., 39A n.29. But the respondents in this case have sought injunctive relief against all actions by the government petitioners in regard to individual coal-related projects (see pp. 6-7, *supra*), and the court below in fact enjoined action upon those projects involved in the Eastern Powder River Coal Basin impact statement (see pp. 15, 19, *supra*). Furthermore, the majority of the court below conceded that if "the federal appellees decide to prepare a comprehensive regional EIS for the Northern Great Plains, it is, of course, of no consequence to us what form it takes" as the "EIS may be incorporated in already planned statements for individual projects" as well as "subdivided into subregional statements, or . . . issued as a whole." App. A., 48A n. 36. Hence, it makes no practical difference whether the issue in terms relates to the need for a "regional EIS," as here, or to the need for a more comprehensive environmental analysis in the impact statement for a single project as was contended in the cases discussed above.

In short, as Judge MacKinnon stated in dissent, the majority's distinction of the cases in other circuits "is a classic example of a distinction without a difference" as surely "it is not reasonable to suggest that the decisions reached by other courts are somehow less sound because they were able to assess the need for a regional EIS in the context of a challenge to the sufficiency of

a specific statement whereas this court is considering a challenge in the abstract without ever determining that a particular EIS does not comply with the dictates of NEPA." App. A, 65A. And, as Judge MacKinnon also stated, "[d]evelopments in one part of the Northern Great Plains are essentially independent from developments elsewhere in the region," as "development of some portion of the coal reserves does not irretrievably commit the federal agencies to permit development of the entire reserve," and "it is clear that even the largest of the proposed projects will not have an environmental impact on the entire Northern Great Plains Region." App. A., 63A. See, also, *id.* n. 12, 64A.

Thus, the overwhelming weight of authority in the lower courts establishes that, in the circumstances involved here, an environmental impact statement limited to a particular proposed project is sufficient. A comprehensive "regional" statement is not required, either separately or as a part of the statement upon a particular proposed project, as each such project has independent utility and the approval of one will not necessitate approval of others. But however that may be, this Court's *SCRAP II* decision leaves no possible doubt that a regional impact statement is not required since none of the federal petitioners has reported upon, recommended, or proposed any region-wide federal action in regard to the development of coal and related resources within the so-called Northern Great Plains region.

CONCLUSION

For the reasons stated above, the Judgment of the Court of Appeals should be reversed and the case remanded with instructions to affirm the Judgment of the District Court.

Respectfully submitted,

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APPENDIX

APPENDIX

DEPARTMENT OF THE INTERIOR

News Release

OFFICE OF THE SECRETARY

For Release 10:00 A.M. EST January 26, 1976

New Federal Coal Leasing Policy To Be Implemented Under Controlled Conditions

Secretary of the Interior Thomas S. Kleppe today announced a new comprehensive federal coal leasing policy to promote orderly development of public energy resources.

Kleppe said the new policy, which would be implemented on a gradual and logical basis, was designed to: help keep national energy costs down by permitting timely and efficient development of federal coal by leasing only when needed; provide a proper balance between the national policy requirement for utilization of the nation's most abundant fossil fuel and preservation of the environment; discourage private holdings of excessive reserves of federal coal by implementation of diligent development regulations requiring timely development or relinquishment; provide for issuance of preference rights leases under a new definition of commercial quantities; return fair market value to the taxpayer through competitive bid sale of coal leases; and public participation in the federal coal decision process.

The Secretary said the new policy would include these steps:

—adoption of the Energy Minerals Activity Recommendation System (EMARS), which requires careful analysis to determine need for coal and to minimize environmental impacts;

—adoption of a totally competitive leasing system, under which no new coal prospecting permits will be granted;

—development of final regulations governing conditions under which mining operations and post-mining reclamation must take place;

—preparation of regional environmental impact statements, wherein groups of coal and coal-related actions are proposed in a defined geographical area;

—continuation, until the new coal leasing system has been implemented, of the short-term leasing criteria that has been in effect since February, 1973, to allow leasing for ongoing mining operations or to meet near-term reserve requirements;

—promulgation of effective diligent development standards;

—establishment of a firm definition for commercial quantities to determine whether leases will be issued to preference right lease applicants under the Mineral Leasing Act; and,

—removal under controlled conditions of the federal coal leasing moratorium that has been in effect since early 1971.

Kleppe reaffirmed his support of Indian self-determination in leasing of tribal coal resources, a significant portion of western coal reserves.

Three key points affected adoption of the policies and procedures announced—the first of which was the guiding principle that only those deposits needed would be leased. Second, he said, was recognition of the fact that some of the deposits already leased were costly to mine and market when compared to potentially low-cost coal not yet offered for lease. Third, the Secretary said, was the need to encourage diligent development of leases through appli-

cation of regulations and incentives that discourage retention of non-producing leases.

• • •

STATEMENT ON NEW COAL LEASING POLICY

January 26, 1976

Denver, Colorado

The vast Federal coal resources of the American west constitute a vital source of energy for a Nation too heavily dependent on foreign sources of petroleum. Coal is our most abundant fossil fuel, yet it provides only 17% of the energy Americans consume each year. It is obvious that these Federal coal deposits must be developed, so that coal can take its rightful place in the Nation's energy matrix. It is also obvious that this resource must be developed in a sound, rational, and environmentally prudent manner. As manager of this public resource, the Department of the Interior must establish a firm and realistic coal policy. The elements of this policy are:

1. A proper balance between the national interest in the use of coal and the National interest in the protection of the environment.

2. A fair market return to the taxpayer on the sale of this public resource.

3. The leasing of the coal that is needed but only when it is needed.

4. The leasing of that coal whose value exceeds the total cost of production including environmental costs.

5. The elimination of excessive lease holdings.

6. Public participation in the Federal coal decision process.

We have therefore decided to adopt a new coal leasing policy based primarily on the proposal outlined in the

Coal Programmatic Environmental Impact Statement, and to take other actions which combine to form a comprehensive National Coal Policy for the Federal lands. This policy must be firmly in place and thoroughly understood by the industry, the States, and the public at large before actual leasing can begin.

The single most important element of a more rational Federal coal policy is the implementation of a new coal leasing *process*. But to fully understand what the process is and why it is necessary, it must be viewed in context with other actions the Department has taken or intends to take. These include: new and more stringent standards for diligent development of Federal coal leases, an updated definition of the term "commercial quantities: in order to dispose of pending preference right lease applications, and realistic and effective surface mined land reclamation standards. Together these elements combine to form the foundation of a more rational and believable Federal coal policy incorporating a process in which all interested parties, the government, the industry, the affected States and the public itself have a role.

Background

Early in 1971, coal leasing on the Federal lands was halted because large amounts of coal were already under lease, little coal was being produced, and there was widespread concern that the Department's leasing processes were not environmentally adequate. In February 1973, this moratorium was modified to permit leasing when coal was needed to maintain existing mining operations, or as a reserve against production in the near future. This limited leasing was allowed only when the environment could be protected and when the provisions of the National Environmental Policy Act had been compiled with. Only ten leases have been issued under these criteria; all were for extensions of existing operations.

For the past four years, the Department has been working to devise a new policy and new procedures that will permit resumption of Federal coal leasing, as the need arises, and in a way that is responsible to the taxpayers who own the resource, to the energy consumers who will benefit by its use, to the environment, and to the public at large. In my view the early establishment of a firm and comprehensible coal leasing process is clearly in the best interests of all concerned.

A part of the process of developing a new coal policy was the creation in June of 1972 of the Northern Great Plains Resource Program, a cooperative effort of the Departments of Interior and Agriculture, the Environmental Protection Agency and the States of Montana, Wyoming, Nebraska, North Dakota and South Dakota. Seven interagency working groups spent two years gathering data on resource and environmental values in the five-State area, using these data to project the implications of various assumed rates of development of the coal resource. Their report was issued in August of 1975.

Simultaneously, the Bureau of Land Management designed EMARS, the Energy Minerals Activity Recommendation System, a procedure by which the various offices of the several Federal agencies involved in coal leasing, in cooperation with State agencies, will gather and combine resource and environmental information, regional and national policy considerations, and input from the general public to provide recommendations to the Secretary on where, when, and how much coal should be offered for lease.

A third element has been the ongoing revision of regulations under which Federal coal leasing and mining activities would take place. The Bureau of Land Management and the Geological Survey have developed proposed standards governing mining and reclamation practices on the Federal lands. These standards are designed to meet

the highest justifiable environmental criteria. They have been published for comment, and after final revisions, will be promulgated before any new leasing takes place.

During this time, the Department prepared the Coal Programmatic Environmental Impact Statement, which was released in September of 1975. This statement is intended to be a general analysis of the environmental impacts of major leasing alternatives. It will not, however, satisfy the requirement for future site-specific or regional environmental analyses as individual coal-related actions are proposed.

A fifth element in the development of this program has been the process for consultation with the governors of the western States and their staffs. Several meetings have been held with the governors or their representatives. We intend to continue close consultation with the Western Governors' Regional Energy Policy Office on all aspects of Federal coal development in the west.

Finally, the development of a national energy policy announced by the President in February 1975 and the exhaustive study entitled "Project Independence Blueprint" gave us a truer picture of the Nation's future energy needs and the role coal must play in meeting these goals.

From these actions, and from detailed and spirited debate both within and outside the Department, have come the policies I am announcing today.

Announcement Decision

I have decided to take steps to implement a new policy for Federal coal leasing and to adopt a process based primarily on the proposal contained in the Coal Programmatic Environmental Impact Statement. These are the steps I intend to take:

1. *The adoption of EMARS,* the Energy Minerals Activity Recommendation System, the actual leasing *process.*

2. *The adoption of a totally competitive leasing system,* under which no new coal prospecting permits will be granted.

3. *The development of final regulations governing conditions under which mining operations and post-mining reclamation must take place.*

4. *The preparation of regional environmental impact statements,* where groups of coal and coal-related actions are proposed in a defined geographical area.

5. *The continuation of the short-term criteria,* under which leases can be granted for continuation of existing mining operations or where needed to fulfill short-term production needs until the new leasing is fully implemented. Such leases will be granted only when NEPA provisions have been met and where environmental conditions warrant.

6. *The promulgation of diligent development standards* to assure development or relinquishment of Federal coal resources in a timely manner.

7. *The establishment of firm "commercial quantities" criteria with which existing preference right lease applications can be granted or denied.*

8. *The lifting of the moratorium on Federal coal leasing* so that, as the need arises, we will be able to offer leases for sale.

The Energy Minerals Activity Recommendation System (EMARS)

The adoption of EMARS is the touchstone of the new Federal coal policy. Its purpose is to tell us where coal will be needed, so we can consider whether it should be offered for lease. It will also tell where coal should not be leased and where the environmental consequences of coal development or where other uses of the land outweigh

the need for the coal. It is designed to assure that the public receives a fair market return for the coal that is sold.

The first element of EMARS is the area by area Management Framework Plan (MFP) prepared by the Bureau of Land Management. This is a basic land use plan, prepared with local State and Federal participation which identifies and inventories not only the minerals, but other values, such as agriculture, grazing, wildlife, recreation and water resources. It also analyzes the compatibility and conflicts of these varying land uses. The information contained in the Management Framework Plans will be the basis against which proposals to lease coal will be judged.

The second major element of EMARS is a system of nominations through which industry, State and local governments, environmental groups and the public at large will periodically identify which tracts should or should not be leased. By comparing these nominations with the information contained in the Management Framework Plans, we will make initial judgments on what areas, if any, should be considered.

A third element is environmental analysis. When a leasing action is considered, we will undertake a thorough analysis to determine the effects of the proposed action on the environment. In accordance with the National Environmental Policy Act, when the proposed action is determined to be a major Federal action, an environmental impact statement will be prepared before any specific lease or group of leases is offered.

A fourth major planning element is a system for calculating the economic value of the individual coal deposits which are being considered for lease. The U. S. Geological Survey is developing improved methods for determining such values on coal tracts. The purpose of this valuation system is two-fold: We must be certain that the value of

the coal itself is great enough to warrant environmental risks inherent in the mining activity, and we must ascertain the value of the resource in order to determine the adequacy of competitive bids.

These four elements—Management Framework Plans, nominations, environmental analysis and tract valuations—combine to help us make a decision about where and when leasing should take place, and whether such leasing is in the public interest. No amount of planning is absolutely foolproof, but we believe that the system we have described will help us make a knowledgeable and a rational decision whether the value of the coal is sufficient to warrant the paying of costs, quantifiable and unquantifiable, monetary and environmental. These comparisons of cost and value will vary from time and from place to place, but it is essential that we make careful, case-by-case comparisons, using all the pertinent information available to us at the time.

The nub of the process, however, is the use of the marketplace itself, for the market will ultimately determine what coal, if any, will be leased and developed. After all the careful planning and analysis, the competitive lease system, with bonus bidding, will be the ultimate determining factor in the sale and development of Federal coal.

This EMARS process will be published in the Code of Federal Regulations, prior to its implementation.

Competitive Leasing System

We have determined that all future leasing of Federal coal will be made under competitive leasing system. No new prospecting permits will be issued under our new policy. However, existing preference right lease applications will be processed in a timely fashion, giving priority to those applications which meet the short-term criteria described elsewhere in this document. In addition, I have

directed the Department to study the feasibility of regulations which would enable small business concerns to compete more effectively in the new system.

Surface Mined Land Reclamation Regulations

Coal mining on Federal lands is subject to the Code of Federal Regulations. In September 1975, the Department published, along with a draft environmental impact statement, proposed new regulations governing both mine operations and post-mining reclamation for the mining of Federal coal. These new regulations, when implemented, will provide strict standards for all Federal coal mining activities, and they will be supplemented, where necessary, with site-specific stipulations for individual leases. The proposed regulations are patterned after legislation which is under consideration in the Congress, with specific changes to conform to Administration objectives. They are designed to minimize the adverse environmental effects of actual mining operations and require that the mined land be restored. We intend to allow application of State standards on Federal coal lands, where those standards are at least as stringent as the proposed Federal standards, and where State standards are not prohibitive to the development of the public resource. After further revision based on consultation with the States and other parties, and after completion of the Final Environmental Impact Statement, we intend to publish these regulations as final. I will not permit initiation of leasing until after these regulations have been promulgated.

Regional Environmental Impact Statements

In many cases, the significance of any proposed leasing goes beyond the issuance of an individual lease or the approval of a mining plan. Our leasing will frequently set the course of development for geographic areas encompassing both Federal and non-Federal lands. For this reason, as determined by the Secretary, several coal leases,

or mining plans, may be covered in a single regional environmental impact statement, rather than by multiple environmental impact statements. In such cases, the region covered will be determined by basin boundaries, drainage areas, areas of economic interdependence, and other relevant factors.

In areas where a regional environmental impact statement if [sic] warranted, if an individual action meets the short-term criteria, and where approval is required before completion of the regional statement, an environmental assessment will be made. If, as a result of the assessment, the proposed action is determined to be major in scope, approval of that action will be withheld pending completion of the regional environmental impact statement.

In other cases, single coal leases or mining plans will be analyzed to determine whether or not the proposed action constitutes a major Federal action and an environmental impact statement is required under the National Environmental Policy Act.

Short-Term or Emergency Criteria

Until the new coal leasing system is completely implemented, we will maintain a mechanism in which certain proposed leasing actions can be approved where they meet defined critical production needs. Individual leases may be granted only under the following conditions and terms:

1. The proposed lease must be necessary for continuation of an ongoing mining operation, or

2. The proposed lease must be necessary as a reserve for production in the near future, generally to fulfill production requirements within five years.

3. In all cases, these special actions will be approved only when the provisions of the National Environmental Policy Act have been met. An environmental assessment

must be made to determine whether the proposed action is major in scope. If so, an environmental impact statement will be completed.

4. This limited leasing will be granted only when the environment can be adequately protected and the land can be adequately reclaimed.

Diligent Development

This new coal program will contain requirements for assuring the timely development—or relinquishment—of the Federal coal resources. There are today some 16 billion tons of Federal coal already under lease. On the surface, it would appear that this amount is sufficient for years to come. However, in reality we do not know whether that amount is sufficient, or if the coal we have leased is suitable for mining. We do know that some of this coal, perhaps as much as one-third, is not suitable for mining for environmental and economic reasons. However, the enormity of this leased coal clouds the leasing issue. We have therefore promulgated standards which will require diligent development—or relinquishment—of new or existing coal leases. Under these standards, a lessee must have mined at least one-fortieth of the reserves of his lease (2½%) within ten years. However, an added major impetus to diligent development will be an economic incentive. The lessee must pay advance royalties beginning in the sixth year of the lease, based on a production schedule that would exhaust the deposit in forty years. In addition, the production royalty rates have been substantially increased so that the normal charge will be eight percent of the value of the coal at the mine-mouth. This rate may be varied, up or down, for good causes in particular circumstances, but in no case can the royalty rate be less than five percent. These new standards will assure that the coal most likely to be produced will be produced in a timely fashion and that coal under lease which is not readily producible will be returned to the Federal estate.

Preference Right Lease Applications

In addition to the coal already under lease, there are some ten billion tons of Federal coal for which preference right lease applications have been made. In order to dispose of these pending applications, a realistic definition of the term "commercial quantities" must be made under the Mineral Leasing Act of 1920. Heretofore, the standard we have applied has been simply whether the mineral existed in the proposed lease area and whether it was mineable under present technology. That standard is out of date in today's business atmosphere.

In undertaking the development of a coal mine, any prudent businessman would have to consider the costs of actual mining, the cost of transporting his coal to market and the cost of meeting environmental protection requirements. These cost considerations would be weighed against the value of the coal itself. Therefore, we have published a proposed definition of the term "commercial quantities" which considers those factors which a prudent businessman must take into account. With the final promulgation of this definition, we will be able to determine which preference right lease applications should or should not be granted under the terms of the Mineral Leasing Act from a practical and prudent business standpoint. Moreover, with these final definitions, we can begin to process the preference right lease applications now pending. Our first priority will be to process those applications which meet the short-term criteria described above.

Coal Leasing Policy on Indian Lands

Indian coal resources represent a significant portion of western coal reserves. However, our estimates clearly indicate that the public lands contain adequate reserves to meet national needs. There is no reason for Indian tribes to fear that their resources will be developed without their full concurrence.

As trustee for the various tribes, our responsibility is to see that their desires with respect to coal development are met.

Should a tribe decide to lease coal, it will be the Department's responsibility to support that decision, providing it is determined to be in the tribe's best interests.

The Department will therefore approve coal leasing on Indian lands where:

1. the tribal or individual Indian landowner desires to dispose of the coal;

2. the terms and conditions of the lease are in the best interest of the Indian landowner; and

3. appropriate environmental protection and reclamation safeguards are imposed on the lessee.

Lifting the Moratorium

With the implementation of the policy we have set forth, and with the coal leasing process firmly in place and understood by all those concerned, there is no need to continue the moratorium on new coal leasing which was established nearly four years ago. We want to emphasize, however, that the lifting of the moratorium does not automatically mean that leasing will resume in the immediate future. The process, EMARS, once fully implemented, will tell us whether new leasing is necessary. The policies and procedures are designed to lease only those deposits that are needed for production. The control points which we have built into the process, including Management Framework Plans, nominations, environmental analysis, resource valuations, competitive leasing and diligent development are all designed to assure only the coal which is necessary is leased. We are not in the business of leasing coal for speculative purposes. We are in the business of seeing that the Federal resources are produced for the Nation's benefit.